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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 13
RLS/TW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bristol Hospital

Serial No. 75/686,460

Richard D. Getz of McCormick, Paulding & Huber, LLP for
Bristol Hospital.

Rebecca Gilbert, Trademark Examining Attorney, Law Office
113 (Meryl Hershkowitz, Managing Attorney).

Before Simms, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Bristol Hospital (applicant), a Connecticut
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark shown
below

for occupational health services.¹ The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC § 1052(d), on the basis of Registration No. 2,032,006, issued January 21, 1997, covering the mark shown below

for medical services for an insured employee of a company. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

The Examining Attorney argues that applicant's mark MEDWORKS (and design) and registrant's mark MedWorks (stylized) are nearly identical in sound, appearance and meaning. It is the Examining Attorney's position that the word portion of applicant's mark is more likely to be impressed on a purchaser's memory, and that the design in applicant's mark is not sufficient to avoid a likelihood of confusion. With respect to the services, the Examining Attorney contends that applicant's occupational health services and registrant's medical services are very similar medical services. In this regard, the Examining Attorney

¹ Application Serial No. 75/686,460, filed April 19, 1999, based upon allegations of use since December 31, 1988.

has made of record a definition of the words "occupational health" meaning "The promotion and maintenance of physical and mental health in the work environment." The Examining Attorney argues that both registrant and applicant describe their services broadly and without limitation as to the class of potential purchasers. The Examining Attorney contends that registrant's medical services for employees encompass applicant's occupational health services. In any event, the Examining Attorney argues that the services are closely related. The Examining Attorney also points to specimens of record in support of her argument that employees are also exposed to applicant's mark (on medical records, for example).

Applicant, on the other hand, argues that confusion is not "probable." In this regard, applicant argues that the respective marks are substantially different in appearance and meaning, and that applicant's mark has a hand and hammer design as well. With respect to the services, applicant maintains that its services are offered to employers and not directly to employees.² Employees would not have an opportunity to confuse the marks or the

² Earlier in the prosecution of this case, applicant had argued that its mark is used in connection with occupational health services rendered to hospital patients.

services, according to applicant, because of the different channels of trade in which the services travel. It is applicant's contention that the only common purchaser would be a human resources procurement agent whose job involves the procuring of health care for his or her employer. However, that person would be relatively sophisticated, according to applicant. Applicant also points to the fact that its mark has been in use for twelve years, the last seven of which have been concurrently with registrant's mark. During this period of time, applicant's counsel states that there have not been any instances of actual confusion.

Concerning the lack of common purchasers, the Examining Attorney contends that applicant has submitted no evidence to show that employers would not purchase registrant's medical services offered to their employees. Further, the Examining Attorney contends that, even if applicant's argument in this regard is true, employees are the users and the beneficiaries of both applicant's and registrant's services.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that the respective marks and services are so similar that confusion is likely. The respective marks

would be pronounced identically and have similar commercial impressions. Although applicant's mark has a design element, we do not believe that that design element will avoid likelihood of confusion. Both marks are clearly dominated by the identical term "MedWorks" or "Medworks." If these marks were used in connection with closely related goods or services, confusion would be likely.

Turning to the respective services, we begin our analysis by noting that the issue of likelihood of confusion must be determined on the basis of the descriptions of goods or services in the application and the cited registration. While applicant in its argument has attempted to limit its services to occupational health services directed solely to employers, the description set forth in its application is not so restricted. As described, we believe that registrant's medical services for employees as well as applicant's occupational health services may be offered and sold to the same class of purchasers—employees (or perhaps employers for the benefit of their employees). Users or beneficiaries of registrant's medical services offered under the mark MedWorks (stylized) who then encounter applicant's MEDWORKS (and design) occupational health services are likely to believe that both registrant's medical services and

applicant's closely related occupational health services come from or are sponsored or endorsed by the same source.

With respect to applicant's attorney's contention that there has been a period of concurrent use without any instances of confusion, suffice it to say that this record does not contain any information concerning the level of sales and advertising of the respective services, or other information showing that the same marks have in fact been used in the same geographic areas such that there has been an adequate opportunity for confusion to have arisen.

Decision: The refusal of registration is affirmed.